

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ZEENAT ALI,

Plaintiff,

Civil Action No.:
21-cv-00416-EK-RLM

-against-

ANSWER

T.J. MAXX and THE TJX COMPANIES, INC.,

Defendants.

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Defendant, THE TJX COMPANIES, INC. s/h/a T.J. MAXX and THE TJX COMPANIES, INC. ("TJX") by its attorneys, SIMMONS JANNACE DELUCA, LLP, as and for its Answer to the Complaint of plaintiff, responds as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "1" of the Verified Complaint.

2. Denies the allegations contained in numbered paragraph "2" of the Verified Complaint.

3. Denies the allegations contained in numbered paragraph "3" of the Verified Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "4" of the Verified Complaint and leaves all questions of law to the Court.

5. Denies the allegations contained in numbered paragraph

"5" of the Verified Complaint.

6. Denies the allegations contained in numbered paragraph "6" of the Verified Complaint.

7. Denies the allegations contained in numbered paragraph "7" of the Verified Complaint.

8. Denies the allegations contained in numbered paragraph "8" of the Verified Complaint

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "9" of the Verified Complaint and leaves all questions of law to the Court.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "10" of the Verified Complaint and leaves all questions of law to the Court.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "11" of the Verified Complaint and leaves all questions of law to the Court.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "12" of the Verified Complaint and leaves all questions of law to the Court.

13. Denies the allegations contained in numbered paragraph

"13" of the Verified Complaint.

14. Denies the allegations contained in numbered paragraph "14" of the Verified Complaint except admits TJX is a foreign corporation authorized to conduct business in New York.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "15" of the Verified Complaint and leaves all questions of law to the Court.

16. Denies the allegations contained in numbered paragraph "16" of the Verified Complaint.

17. Denies the allegations contained in numbered paragraph "17" of the Verified Complaint.

18. Denies the allegations contained in numbered paragraph "18" of the Verified Complaint.

19. Denies the allegations contained in numbered paragraph "19" of the Verified Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "20" of the Verified Complaint and leaves all questions of law to the Court.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "21" of the Verified Complaint and leaves all questions of law to the Court.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "22" of the Verified Complaint and leaves all questions of law to the Court.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "23" of the Verified Complaint and leaves all questions of law to the Court.

24. Denies the allegations contained in numbered paragraph "24" of the Verified Complaint.

25. Denies the allegations contained in numbered paragraph "25" of the Verified Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "26" of the Verified Complaint and leaves all questions of law to the Court.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "27" of the Verified Complaint and leaves all questions of law to the Court.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "28" of the Verified Complaint and leaves all questions of law to the Court.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "29" of the Verified Complaint and leaves all questions of law to the Court.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "30" of the Verified Complaint and leaves all questions of law to the Court.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "31" of the Verified Complaint and leaves all questions of law to the Court.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "32" of the Verified Complaint and leaves all questions of law to the Court.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "33" of the Verified Complaint and leaves all questions of law to the Court.

34. Denies the allegations contained in numbered paragraph "34" of the Verified Complaint.

35. Denies the allegations contained in numbered paragraph "35" of the Verified Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "36" of the Verified Complaint and leaves all questions of law to the Court.

37. Denies the allegations contained in numbered paragraph "37" of the Verified Complaint.

38. Denies the allegations contained in numbered paragraph "38" of the Verified Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "39" of the Verified Complaint and leaves all questions of law to the Court.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "40" of the Verified Complaint and leaves all questions of law to the Court except admit TJX Companies, Inc. operated a retail store on a portion of the premises located at 6101 Junction Blvd., Rego Park, New York 11374.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "41" of the Verified Complaint and leaves all questions of law to the Court.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "42" of the Verified Complaint and leaves all questions of law to the Court.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "43" of the Verified Complaint and leaves all questions of law to the Court.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "44" of the Verified Complaint and leaves all questions of law to the Court.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "45" of the Verified Complaint and leaves all questions of law to the Court.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "46" of the Verified Complaint and leaves all questions of law to the Court.

47. Denies the allegations contained in numbered paragraph "47" of the Verified Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "48" of the Verified Complaint and leaves all questions of law to the Court.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "49" of the Verified Complaint and leaves all questions of law to the Court.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "50" of the Verified Complaint.

51. Denies the allegations contained in numbered paragraph "51" of the Verified Complaint.

52. Denies the allegations contained in numbered paragraph "52" of the Verified Complaint.

53. Denies the allegations contained in numbered paragraph "53" of the Verified Complaint.

54. Denies the allegations contained in numbered paragraph "54" of the Verified Complaint.

55. Denies the allegations contained in numbered paragraph "55" of the Verified Complaint.

56. Denies the allegations contained in numbered paragraph "56" of the Verified Complaint.

57. Denies the allegations contained in numbered paragraph "57" of the Verified Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "58" of the Verified Complaint.

59. Denies plaintiff is entitled to the relief requested in the "WHEREFORE Clause."

60. Defendant demands that liability, if any, be apportioned.

AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE

61. Plaintiff's Complaint fails to state a cause of action.

AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE

62. Upon information and belief, the injuries allegedly sustained by plaintiff were not as a result of any culpable conduct by the defendant herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiff, which contributed to or caused plaintiff's alleged injuries.

AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE

63. Upon information and belief, any damages sustained by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE

64. If plaintiff proves at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiff were caused by plaintiff having voluntarily and unreasonably assumed a known

and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE

65. This defendant will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

AS AND FOR ITS SIXTH AFFIRMATIVE DEFENSE

66. Upon information and belief, defendant never received actual or constructive notice of any defective or dangerous condition, and therefore, it cannot be liable for any alleged injuries suffered by plaintiff.

AS AND FOR ITS SEVENTH AFFIRMATIVE DEFENSE

67. Upon information and belief, if plaintiff suffered any damages as alleged in the Verified Complaint, such damages were as a result of an independent superseding act by a third party for which defendant cannot be held liable, and defendant's conduct was in no way the proximate cause of such damages.

AS AND FOR ITS EIGHTH AFFIRMATIVE DEFENSE

68. If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages.

AS AND FOR ITS NINTH AFFIRMATIVE DEFENSE

69. If plaintiff herein has received remuneration and/or compensation for some or all of his or her claimed economic

loss, or will with reasonable certainty receive remuneration and/or compensation for said loss in the future, this defendant is entitled to have plaintiff's award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545(c) of the CPLR.

AS AND FOR ITS TENTH AFFIRMATIVE DEFENSE

70. The alleged condition was open, obvious, notorious, readily apparent, visible and not inherently dangerous.

AS AND FOR ITS ELEVENTH AFFIRMATIVE DEFENSE

71. The causes of action alleged in plaintiff's Verified Complaint are barred by reason of the plaintiff's failure to comply with the ad damnum requirements of CPLR § 3017.

WHEREFORE, for all of the foregoing reasons, it is respectfully requested that plaintiff's Verified Complaint be dismissed in its entirety, and that defendant be awarded the costs and disbursements of this action, reasonable attorney's fees, and such other and further relief as this Court may deem just and proper.

Dated: Hauppauge, New York
January 28, 2021

Simmons Jannace DeLuca, LLP

BY: /s/Allison C. Leibowitz
Allison C. Leibowitz
Attorneys for Defendant
THE TJX COMPANIES, INC. s/h/a T.J.
MAXX and THE TJX COMPANIES, INC.

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